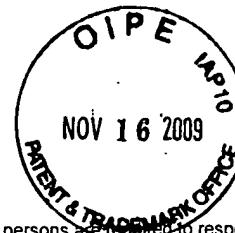




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PTO/SB/33 (07-09)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) 873.0121.U1(US)
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>November 10, 2009</u> Signature <u>Elaine F. Mian</u> Typed or printed name <u>Elaine F. Mian</u>		Application Number 10/559,919 Filed 12/7/2005 First Named Inventor R. Thomas Derryberry Art Unit 2617 Examiner Miller, Brandon J.
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.		
This request is being filed with a notice of appeal.		
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
<p>I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>43,423</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p><u>Walter J. Malinowski</u> Signature Walter J. Malinowski Typed or printed name (203) 925-9400 Telephone number November 10, 2009 Date</p>		
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		
<input type="checkbox"/> *Total of _____ forms are submitted.		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**IN THE U.S. PATENT AND TRADEMARK OFFICE**

In re U.S. Patent Application of:

APPLICANT: R. Thomas Derryberry  
SERIAL NO.: 10/559,919 FILING DATE: December 7, 2005  
EXAMINER: Miller, Brandon J. ART UNIT: 2617  
ATTORNEY'S DOCKET NO.: 873.0121.U1(US)  
CONFIRMATION NO.: 2654  
TITLE: METHOD AND APPARATUS FOR SWITCHING MOBILE STATION  
BETWEEN AUTONOMOUS AND SCHEDULING TRANSMISSIONS

**PRE-APPEAL BRIEF REQUEST FOR REVIEW ATTACHMENT**

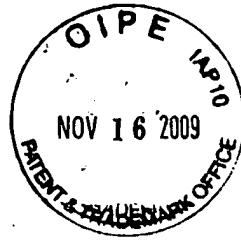
The following is a concise recitation of clear errors in the Examiner's rejections in this application.

1. In the Final Office Action of August 10, 2009, the Patent Office rejected claims 1-19 and 35 under 35 U.S.C. 103(a) as being unpatentable over Kadaba, U.S. Patent No. 7,158,504, in view of Gopalakrishnan, U.S. Patent No. 6,836,666. (Claims 20-34 have been allowed and claims 36-39 have been objected to.)

**A first clear error** is that the Patent Office has failed to appropriately address the claimed subject matter of “the mobile station provides ... **a buffer activity bit as a data rate request bit.**”

All claims 1-19 and 35 directly or through their base claims recite as follows: “while in the scheduled mode, the mobile station provides data transmission power information and data transmission buffer status information as a request to transmit data and a buffer activity bit as a data rate request bit.”

Kadaba discloses a system where a centralized approach to supplemental channel assignment is done. Kadaba discloses, in column 5, lines 52-57, “The Encoder Packet Format Indicator Channel (R-EP-FICH) contains the format, i.e., a unique specification of the size, duration, and data rate, of the wireless unit’s current transmission. Thus, the format allows the base station to determine the size, duration, and rate of a wireless unit’s data burst transmission without ambiguity.” The mobile station reports information that indicates its data rate (column 5, lines 60-63), but **Kadaba does not disclose a “buffer activity bit as a data rate request bit.”** A scheduling method is disclosed in U.S. Patent Application Serial No. 09/851,100, now Gopalakrishnan, U.S. Patent No. 6,836,666. The 6 bit indicator of mobile buffer size as a scheduling request, disclosed by Kadaba, in column 4, lines 61-64, is not “a buffer activity bit as a data rate request bit.” A scheduling request is described by Kadaba in column 2, lines 36-40 as



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follows: “One approach which evolved from the 3G CDMA standard is based on scheduling, where the user requests access to the supplemental channel, and the base station allocates resources to the user for the transmission of data over the supplemental channel.” **It is apparent from this passage that scheduling has to do with timing of a transmission and not a rate at which data is transmitted.** So the passage in column 4, lines 61-64, of **Kadaba does not relate to a data rate request or a buffer activity bit.**

Gopalakrishnan, in column 4, lines 44-49, discloses a mobile station request for a traffic channel consists of the size of traffic data to be transmitted, information about mobile capabilities related to its power class, some auxiliary information related to the transmission, and quality of service parameters or requirements such as delay or throughput bounds. Gopalakrishnan discloses, in column 4, line 66, through column 5, line 11, the base station may choose to transmit the value of the maximum allowable transmission rate. Claim 1 of Gopalakrishnan discloses that information from which the power available at the first user station for data traffic on the reverse link can be determined to compute both a rate at which the first user station can transmit data and a certain when the first user station can transmit data , the rate and the certain time being computed so as to control the level of interference while maximizing resources on the uplink and transmitting to the first user station information that comprises an indication of when and at what rate it can transmit data.

**The Patent Office has not described how Gopalakrishnan teaches or suggests “the mobile station provides data transmission power information and data transmission buffer status information...”** The Patent Office asserted, in the Final Office Action dated August 10, 2009, on page 7, lines 15-17, that “Gopalakrishnan teaches the mobile station provides data transmission power information and data transmission buffer status information as a request to transmit data (see col. 4, lines 35-39 & 44-49)” and, on page 10, lines 4-6, that “Gopalakrishnan teaches the apparatus provides data transmission power information and data transmission buffer status information as a request to transmit data (see col. 4, lines 35-39 & 44-49).”

These passages from Gopalakrishnan are reproduced below as follows:

Data users are scheduled to transmit based on parameters such as the quality of service or priority purchased by the user, the amount of data to be transmitted, the time since the last transmission and the time criticality

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of the data to be transmitted.

1. Mobile stations request for RL traffic channel. This request consists of size of traffic data to be transmitted (quantized in bytes for example), information about mobile capabilities related to its power class, some auxiliary information related to the transmission, and QoS parameters or requirements such as delay or throughput bounds”

**The cited paragraphs do not suggest nor teach “...the mobile station provides data transmission power information and data transmission buffer status information..”** Even though these passages recite “information about mobile capabilities related to its power class,” there is no disclosure that this information relates to transmission power information. Although these passages do disclose “the amount of data to be transmitted,” this is not the same as “data transmission buffer status information.”

**Furthermore, Gopalakrishnan, like Kadaba, does not disclose a “buffer activity bit as a data rate request bit.” Since neither Gopalakrishnan nor Kadaba disclose this claimed subject matter, no purported combination of these two references would disclose this claimed subject matter.**

**The Patent Office stated on page 12, of the August 10, 2009, Final Office Action, in the Response to Arguments section, as follows: “Regarding independent claims 1 and 10 the combination of 37 Kadaba and Gopalakrishnan teach a device as claimed. Kadaba teaches a buffer activity bit as a data rate request bit (see col. 4, lines 61-64 and FIG. 1). The 6 bit indicator of mobile buffer size as a scheduling request over a 10 ms reads on a buffer activity bit as a data rate request bit because buffer size is an indication of buffer activity and a request to schedule data over a 10 ms frame period is a data rate request.”**

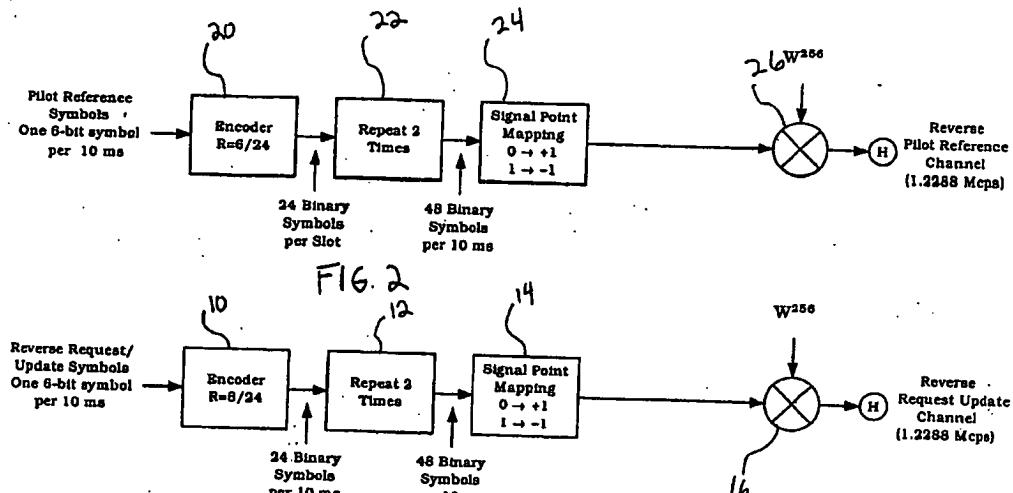
Kadaba discloses in column 4, lines 61-64, as follows: “FIG. 1 shows a block diagram of an embodiment of the R-RUCH structure which carries a 6 bit indicator of mobile buffer size as a scheduling request over a 10 ms. frame.”

Claim 1 recites “while in the scheduled mode, the mobile station provides data transmission power information and data transmission buffer status information as a request to transmit data and **a buffer activity bit as a data rate request bit.**”

Applicant requests that the Patent Office indicate where in the cited passage of Kadaba (column 4, lines 61-64) there is disclosure of “a buffer activity bit” or “a data rate request bit.”

The Patent Office also cites FIG. 1 of Kadaba as teaching the claimed subject matter of “the mobile station provides … a buffer activity bit as a data rate request bit.” For reference, FIG. 1 of Kadaba is provided immediately below.

## Structure of Enabling Channels – Reverse Link



The above FIG. 1 of Kadaba shows pilot reference symbols that are encoded, repeated mapped, and mixed before being transmitted on a reverse pilot reference channel and reverse request/ update symbols that are encoded, repeated, mapped, and mixed before being transmitted on a reverse request update channel. But, claim 1 recites “the mobile station provides … a buffer activity bit as a data rate request bit.” FIG. 1 of Kadaba does not show “a buffer activity bit” or “a data rate request bit.”

The 6 bit indicator of mobile buffer size as a scheduling request is not “a buffer activity bit as a data rate request bit.” A scheduling request is described by Kadaba in column 2, lines 36-40 as follows: “One approach which evolved from the 3G CDMA standard is based on scheduling, where the user requests access to the supplemental channel, and the base station allocates resources to the user for the transmission of data over the supplemental channel.” It is apparent from this passage that scheduling has to do with timing of a transmission and not a rate at which data is transmitted. So the passage in column 4, lines 61-64 of Kadaba does

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**not relate to a data rate request or a buffer activity bit.**

The Patent Office is respectfully requested to reconsider and remove the rejections of the claims 1-19 and 35 under 35 U.S.C. 103(a) based on Kadaba in view of Gopalakrishnan and to allow all of the pending claims 1-39 as now presented for examination. An early notification of the allowability of claims 1-39 is earnestly solicited.

Respectfully submitted:

Walter J. Malinowski November 9, 2009  
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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450.

11/10/2009 Elaine F. Brian  
Date Name of Person Making Deposit